

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MARIO DIAZ,

Plaintiff,

vs.

**WEXFORD, INC., JANE DOES
NURSES, and Dr. V. SHAH,**

Defendants.

Case No. 19-cv-448-JPG

MEMORANDUM AND ORDER

GILBERT, District Judge:

Plaintiff Mario Diaz filed this action pursuant to 42 U.S.C. §1983 seeking relief for deprivations of his constitutional rights. The Complaint did not survive screening because he failed to state a claim (Doc. 9). On June 26, 2019, the Court dismissed the Complaint without prejudice pursuant to 28 U.S.C. §1915A(b).

Plaintiff was granted leave to file a First Amended Complaint on or before August 29, 2019 (Doc. 17). He was warned that the case would be dismissed with prejudice if he failed to take any action by that deadline. In response, Plaintiff filed the pending Motion to Modify (Doc. 18). The motion asks the Court to have the Illinois Department of Corrections remove the nut and screw from his right shoulder and to compensate Plaintiff for his pain and suffering. The motion does not appear to be an amended complaint. Even if the Court considers his motion to be his proposed amendment, his motion merely states a request for relief without any allegations of a violation of his constitutional rights. A successful Complaint generally alleges “the who, what, when, where, and how...” *See DiLeo v. Ernst & Young*, 901 F.2d 624, 627 (7th Cir. 1990). Thus, if Plaintiff

wants to pursue his claims for the treatment of his right shoulder, he must file an amended complaint. The amended complaint should identify who violated Plaintiff's constitutional rights by name, should include a description of how Plaintiff's rights were violated, and when that violation took place. The Court will give Plaintiff one more opportunity to submit a proper amended complaint. Plaintiff's First Amended Complaint is due **October 15, 2019**. Should Plaintiff fail to file his First Amended Complaint within the allotted time or consistent with the instructions set forth in this Order, the entire case shall be dismissed with prejudice for failure to comply with a court order and/or for failure to prosecute his claims. Fed. R. App. P. 41(b). *See generally Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994); 28 U.S.C. § 1915(e)(2). The dismissal shall count as one of Plaintiff's three allotted "strikes" under 28 U.S.C. § 1915(g).

An amended complaint supersedes and replaces the original complaint, rendering the original complaint void. *See Flannery v. Recording Indus. Ass'n of Am.*, 354 F.3d 632, 638 n. 1 (7th Cir. 2004). The Court will not accept piecemeal amendments to the original Complaint. Thus, the First Amended Complaint must stand on its own, without reference to any previous pleading, and Plaintiff must re-file any exhibits he wishes the Court to consider along with the First Amended Complaint. The First Amended Complaint is subject to review pursuant to 28 U.S.C. § 1915A.

Plaintiff is further **ADVISED** that his obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee remains due and payable, regardless of whether Plaintiff elects to file a First Amended Complaint. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

Finally, Plaintiff is **ADVISED** that he is under a continuing obligation to keep the Clerk of Court and each opposing party informed of any change in his address; the Court will not

independently investigate his whereabouts. This shall be done in writing and not later than **7 days** after a transfer or other change in address occurs. Failure to comply with this Order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution. *See* Fed. R. Civ. P. 41(b).

The Clerk is **DIRECTED** to mail Plaintiff a blank civil rights complaint form for use in preparing the First Amended Complaint.

IT IS SO ORDERED.

DATED: 9/17/2019

s/J. Phil Gilbert
United States District Judge